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March 8, 2004

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW – Lobby Level  
Washington, D.C. 20554

Re: Notice of Ex Parte -- Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, WC Docket No. 02-361

Dear Ms. Dortch:

Attached please find a public version of a February 23, 2004 *ex parte* letter filed by SBC Communications, Inc., in the above-referenced docket. The original letter, which inadvertently contained an attachment with a reference to confidential material that is not relevant to this proceeding, has been withdrawn from the public record in this docket.

Please do not hesitate to contact me if you have any questions or need additional information. Pursuant to 1.1206 of the Commission's Rules, this letter is being filed electronically with the Commission.

Sincerely,

/s/ *Gary L. Phillips*

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February 23, 2004 – *Public Version*

*Via Electronic Submission*

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW – Lobby Level  
Washington, D.C. 20036

Re: Notice of Ex Parte -- Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, WC Docket No. 02-361

Dear Ms. Dortch:

On behalf of SBC Communications, Inc. (SBC), I am writing to address assertions made by Sprint regarding the scope of its access charge avoidance activities. In an *ex parte* letter to the Commission,<sup>1</sup> Sprint -- apparently relying on the same erroneous interpretation of the Commission's rules as AT&T -- claims that by using an Internet Protocol (IP) network to transport long distance traffic between points on the public switched telephone network, it is entitled to avoid paying access charges on that traffic and is instead permitted to use "alternative terminating arrangements."<sup>2</sup> Sprint also responds to a recent SBC *ex parte* letter, in which SBC notes that, in just one month, Sprint had migrated more than 40 percent of certain traffic sampled by Southwestern Bell to its IP backbone.<sup>3</sup> Sprint claims that it has, in fact, migrated only a "minimal" amount of long distance traffic onto its IP network.<sup>4</sup>

SBC does not dispute that, on a national basis, Sprint may be terminating only a small amount of traffic without paying the requisite access charges. Indeed, SBC's traffic studies do not suggest that Sprint is engaged in widespread access charge avoidance across SBC's entire service area. These studies do show, however, that Sprint has recently engaged in significant, targeted access charge avoidance for long distance traffic terminating in Texas.

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<sup>1</sup> *Ex Parte* Letter from Norina Moy, Sprint, to Marlene Dortch, FCC, WC Docket No. 02-361 and CC Docket No. 01-92, Feb. 9, 2004 (Sprint Feb. 9 Letter).

<sup>2</sup> Sprint Feb. 9 Letter at 1. In SBC's previous filings in this docket, we provided detailed arguments explaining that AT&T and other carriers are unlawfully failing to pay access charges for plain old long distance service that they happen to transport in IP format for some distance. See Memorandum by SBC Communications, Inc., Urging the Commission to Deny AT&T's Access Charge Avoidance Petition, WC Docket Nos. 02-361, 03-211 & 03-266, January 14, 2004 (SBC Access Avoidance Memorandum), attached as an exhibit to *Ex Parte* Letter from James Smith, SBC, to Michael Powell, FCC, WC Docket No. 02-361 (Jan. 14, 2004).

<sup>3</sup> *Ex Parte* Letter from Gary Phillips, SBC, to Marlene Dortch, FCC, WC Docket No. 02-361, Feb. 3, 2004 (SBC Feb. 3 Letter).

<sup>4</sup> Sprint Feb. 9 Letter at 1.

Specifically, SBC conducted detailed studies of Sprint long distance traffic that terminated in Texas during the last 8 months. SBC analyzed long distance calls greater than three minutes in duration from SBC local customers in its twelve-state region who had selected Sprint as their long distance carrier and who had called SBC local customers in Texas.<sup>5</sup> By focusing on calls that both originated from an SBC local customer and terminated to an SBC local customer, SBC was able to compare the originating switched access record for each call with its records of the means by which the call actually terminated.<sup>6</sup> If Sprint were lawfully terminating long distance calls to SBC local customers in Texas, SBC would expect to see nearly 100 percent of the originating calls being terminated over Feature Group D access trunks in Texas.<sup>7</sup> Stated another way, SBC would expect to see almost zero percent of Sprint's long distance traffic to SBC local customers in Texas terminating over *non*-Feature Group D access trunks.

During the first seven months of the study, SBC did observe nearly zero percent of Sprint's long distance traffic to Texas terminating over non-Feature Group D access trunks. As depicted in the chart below, on June 4, October 22, and December 8, 2003, the percentage of Sprint's long distance traffic terminating in Texas over non-Feature Group D access trunks was 0.8 percent, 0.9 percent, and 0.4 percent, respectively. On January 5, 2004, however, SBC observed a massive spike in this type of traffic -- nearly 32.8 percent of Sprint's long distance calls terminated over non-Feature Group D access trunks.

**Long Distance Calls from SBC Local Customers in SBC's Twelve State Region Carried by Sprint to SBC Local Customers in Texas**

Date of Traffic Studied	Number of Calls Studied (Greater than 3 minutes)	Non-Feature Group D Termination
June 4, 2003	21,576	0.8%
October 22, 2003	39,377	0.9%
December 8, 2003	36,418	0.4%
January 5, 2004	41,935	32.8%

In light of this startling discovery, SBC undertook a more detailed seven-day study of Sprint's long distance traffic. SBC analyzed long distance calls greater than two seconds from SBC local customers in the five-state Southwestern Bell region who had selected Sprint as their long distance carrier and who had called SBC local customers in Texas. As depicted in the chart below, an average of 42.6 percent of Sprint's long distance calls terminated over non-Feature Group D access trunks.

**Long Distance Calls from SBC Local Customers in SBC's Five-State Southwestern Bell Region Carried by Sprint to SBC Local Customers in Texas**

Date of Traffic Studied	Number of Calls Studied (Greater than 2 seconds)	Non-Feature Group D Termination
January 5-11, 2004	347,471	42.6%

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<sup>5</sup> This analysis excludes SBC customers in the Southern New England Telephone Company region.

<sup>6</sup> SBC's study covers only long distance calls that originated and should have terminated over switched access facilities. It does not cover calls originating and/or terminating over special access facilities.

<sup>7</sup> A *de minimis* number of long distance calls may not be recorded as terminating over Feature Group D access trunks because of legitimate end user actions, such as call forwarding, among other things.

These studies represent a sampling of traffic and do not necessarily suggest pervasive access avoidance by Sprint at the national level. Nor do they necessarily contradict Sprint's claim that it avoided access charges on only a small amount of traffic terminated to SBC in 2003. They do, however, indicate significant unlawful access avoidance by Sprint in Texas during early 2004. More importantly, as SBC pointed out in its recent *ex parte* letter, SBC's studies show that Sprint (and, it would be reasonable to assume, other IXCs) have the capability to dramatically increase their access avoidance in a very short period of time.<sup>8</sup> To prevent Sprint or any other carrier from exercising these capabilities to avoid their access charge obligations, the Commission should immediately deny AT&T's access avoidance petition and send a strong message that such unlawful activities will not be tolerated.

Pursuant to 1.1206 of the Commission's Rules, this letter is being filed electronically with the Commission.

Sincerely,

/s/ *Gary L. Phillips*

Gary L. Phillips

Cc: Chairman Michael K. Powell  
Commissioner Kathleen Abernathy  
Commissioner Michael Copps  
Commissioner Kevin Martin  
Commissioner Jonathon Adelstein  
Christopher Libertelli  
Matthew Brill  
Jessica Rosenworcel  
Lisa Zaina  
Scott Bergmann  
Daniel Gonzalez

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<sup>8</sup> SBC Feb. 3 Letter at 2.